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CENTRAL FAX CENTERAtty. Docket No. IDR0020
Application No: 10/789,317

JAN 17 2008

Remarks

The Examiner has required election of a single disclosed species in the above identified application. Applicant has elected silicon as the single Group IVA species, with traverse.

Restriction requires that the particular reasons relied on by the Examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate (M.P.E.P. § 808.01). In the present case, the Examiner has required an election of species without including a clear and detailed explanation of the independent or distinct species, thus making it difficult (if not impossible) to actually elect a species without making at least one assumption.

In this case, Applicant's undersigned representative has assumed that Applicant is to elect one element from among the Group IVA elements of the Periodic Table. If the understanding of Applicant's undersigned representative is not correct, clarification of the Requirement to Elect a Single Disclosed Species is respectfully requested.

Further, the burden is on the Examiner to provide a clear demarcation between the disclosed species (MPEP § 814). In this case, the Examiner has only stated that "the species are independent or distinct because each is separate and distinct" (see page 2, first paragraph of the Office Action dated December 18, 2007). The Office Action contains no discussion of the relationship between the different species nor does it set forth any reasons whatsoever for concluding that the species are independent or distinct. It therefore appears that the premise of separateness and distinctness has been simply restated as the conclusion for finding the same, without explanation. Such mere statement of conclusion is insufficient to support patentable distinctness. Therefore, the requirement to elect a single disclosed species is improper, and should be withdrawn.

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Applicant has elected silicon as the Group IVA element, with traverse. However, in view of the complete lack of any reasons to support the election of species requirement, the Requirement to Elect a Single Disclosed Species is improper and should be withdrawn. Thus, in view of the above election and remarks, Claims 1-38 are in condition for examination on the merits. Early notice to that effect is earnestly requested.

If it is deemed helpful or beneficial to the efficient prosecution of the present application, the Examiner is invited to contact Applicant's undersigned representative by telephone.

Respectfully submitted,

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